

Claimant has alleged accidental injury to her right shoulder arising out of and in the course of her employment with respondent, with an accident date of January 2, 1995. Claimant testified to increased symptomatology beginning in November 1994 and continuing through December and January 1995. In late December 1994, claimant advised her employer that she was seeking treatment for her shoulder problem but did not advise her employer of a potential work-related connection to the problem. Respondent was aware that claimant was seeking medical care for the shoulder.

Claimant sought medical care through her own health care provider through January 1995. In early February 1995 claimant advised respondent her increased symptomatology was related to her employment activities as a data entry keyboard operator. Claimant's pain progressed to the point where on February 22, 1995, she was forced to go to the emergency room of the local hospital. Claimant provided a statement to respondent on February 27, 1995, advising her condition was related to her employment and further advising that her condition continued to worsen. K.S.A. 44-520 requires notice of the accident to the employer with ten days after the date of the accident, except, that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary.

In micro-trauma injury situations a key issue, which has long frustrated the Court, deals with date of accident. Likewise, the date of accident has a direct effect upon the notice requirements of K.S.A. 44-520. The Kansas Court of Appeals has dealt with date of accident in the recent cases of Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), and Condon v. The Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995). In Berry the Court of Appeals established a bright line rule finding claimant's last date of employment to be the date of injury in a carpal tunnel micro-trauma situation. While claimant is not suffering from carpal tunnel in this instance, she is suffering from what appears to be a series of micro-traumas to her shoulder with increased symptomatology.

In Condon the claimant suffered from other micro-trauma injuries in addition to carpal tunnel syndrome. In Condon the Appeals Court felt that the Berry bright line rule finding the date of injury as the last day worked would not always be appropriate in a micro-trauma situation. Here the claimant developed an onset of pain in November and December 1994 with increased symptomatology through at least February 22, 1995 when she went to the emergency room. Claimant has filed a Form E-1 with the Workers Compensation Director claiming accidental injury on approximately January 2, 1995. While claimant's attorney does not specifically amend the date of accident beyond January 2, 1995, he did argue at the preliminary hearing of January 2, 1996, that the accident date bright line rule of Berry, supra, did apply, thus, inferring the accident extended beyond the alleged January 2, 1995 date of accident.

The Appeals Board, in considering the evidence, finds that claimant's accidental injury which arose out of and in the course of her employment with respondent was not limited to a date certain of January 2, 1995. Claimant's symptomatology continued to increase at least through February 22, 1995. The actual date of notice to the respondent is unclear, although claimant testified that her job was modified in early February 1995, due to her ongoing symptomatology and complaints of same to respondent. In this case, whether the Appeals Board finds claimant to have suffered accidental injury through early February 1995, through February 22, 1995, or to some later date uncertain when her symptomatology ceased to worsen, the evidence supports a finding that claimant did provide timely notice to respondent of her ongoing symptomatology within ten days of her date of injury as required by K.S.A. 44-520. Therefore, the Appeals Board finds that the Order of Administrative Law Judge Steven J. Howard, dated January 8, 1996, is appropriate and should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard, dated January 8, 1996, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS  
Gary R. Terrill, Overland Park, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director